

**REMARKS****Summary of the Office Action**

In the Office Action, claim 1 stands rejected under 35 U.S.C. 102(b) (or perhaps 35 U.S.C. 103(a)) as being anticipated by WO Publication No. 91/00754 to *Davis* in view of the Technical Article to *Sorbothane*.

**Summary of the Response to the Office Action**

In view of the arguments presented below, Applicant respectfully requests reconsideration of the outstanding rejection of claim 1.

**All Claims are Allowable**

In the Office Action, claim 1 stands rejected under 35 U.S.C. 102(b) (or perhaps 35 U.S.C. 103(a)) as being unpatentable by WO Publication No. 91/00754 to *Davis* in view of the Technical Article to *Sorbothane*.

Applicant traverses the rejection of pending claim 1 for the following reasons.

With regard to independent claim 1, Applicant respectfully asserts that *Davis* and *Sorbothane*, viewed either singly or in combination, fail to teach or fairly suggest an exercise device including, "a solid body of elastic material and being substantially homogeneous throughout, said material comprising a visco-elastic urethane having quasi-liquid properties and substantially faultless memory, said body including a selectively curved continuous uninterrupted outer surface and having a major axis and a minor axis perpendicular to said major axis, said major axis coinciding with the maximum cross-sectional diameter of said body, said minor axis coinciding with the maximum cross-sectional diameter of said body in a plane perpendicular to said major axis, said plane dividing said body into first and second portions, said plane also dividing said maximum cross-sectional diameter into two unequal parts, the outer surface of said first portion approaching an angle of 90° with said major axis as said outer surface of said first portion approaches said major axis, the outer surface of said second portion also approaching an angle of 90° with said major axis as said outer surface of said second portion approaches said major axis, the curvature of said first and second portions being different so that

said outer surface is symmetrical about said major axis and asymmetrical about its minor axis to define a generally egg-shaped outer surface" as recited in independent claim 1.

Specifically, the present invention relates to a hand exercise device comprising only a solid body of elastic material which is substantially homogeneous throughout. The material is a visco-elastic urethane having quasi-liquid properties and substantially faultless memory. The body has a generally egg shaped outer surface defined by a selectively curved continuous uninterrupted outer surface having a major axis and a minor axis perpendicular to the major axis. The major axis coincides with the maximum cross-sectional diameter of the body and the minor axis coincides with the maximum cross-sectional diameter of the body in a plane perpendicular to the major axis. The plane divides the body into first and second portions, the plane also dividing the maximum cross-sectional diameter into two unequal parts. The outer surface of the first portion approaches an angle of 90 degrees with the major axis as the outer surface of the first portion approaches the major axis. The outer surface of the second portion also approaches an angle of 90 degrees with the major axis as the outer surface of said second portion approaches the major axis. The curvature of the first and second portions are different so that the outer surface is symmetrical about the major axis and asymmetrical about the minor axis.

The combination of the present invention is recommended by orthopedic surgeons, physical therapists, and occupational therapists. It is recommended especially for greater patient compliance with the exercise regimens established by the physical therapists and occupational therapists. The unique combination of the shape and material of the device provide therapeutic and medical advantages for use with patients with arthritis, multiple sclerosis, and repetitive stress injuries like carpal tunnel syndrome. The device is also useful in hand surgery rehabilitation, physical and occupational therapy, and stress reduction.

As noted above, the claim has been rejected under 35 U.S.C. 103(a) as being unpatentable over *Davis* in view of the *Sorbothane* technical information. The Examiner states that the technical papers teach several applications for the material called *Sorbothane* including hand exercise devices, and that it would have been obvious to use urethane for the advantages as taught by the technical papers. However, there is no teaching in the prior art of utilizing a solid body of material comprising a visco-elastic urethane having quasi-liquid properties and substantially faultless memory in a hand exercise device which includes the generally egg shaped

outer surface configuration, as specifically set forth in claim 1. It is submitted that the particular material and the configuration of the device as defined in claim 1 comprises a novel intercooperating combination of features which provides improved results and which is nowhere suggested in the prior art.

As pointed out in MPEP § 2131, “[t]o anticipate a claim, the reference must teach every element of the claim.” “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. Of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Moreover, as pointed out in M.P.E.P. § 2143.03, “[t]o establish prima facie obviousness of a claimed invention, all the claimed limitations must be taught or suggested by the prior art”. *In re Royka*, 409 F.2d 981, 180 USPQ 580 (CCPA 1974). Since these criteria have not been met, Applicant respectfully asserts that the rejection under 35 U.S.C. § 103 (a) should be withdrawn because *Davis* and *Sorbothane* do not teach or suggest each feature of independent claim 1.

In view of the above arguments, Applicant respectfully requests the rejection of independent claim 1 under 35 U.S.C. § 103 be withdrawn.

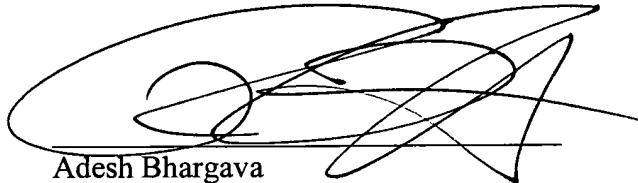
### CONCLUSION

In view of the foregoing, Applicant respectfully requests reconsideration and the timely allowance of the pending claims. Should the Examiner feel that there are any issues outstanding after consideration of the response, the Examiner is invited to contact the Applicant’s undersigned representative to expedite prosecution.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 04-2223. If a fee is required for an extension of time under 37 C.F.R. §1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

**DYKEMA GOSSETT PLLC**

A handwritten signature in black ink, appearing to read "Adesh Bhargava", is enclosed within a large, roughly oval-shaped outline.

Dated: November 16, 2005

By:

Adesh Bhargava  
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